

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:16-CR-112-IF(4)

FILED IN OPEN COURT
ON 5-10-2016
Julie Richards Johnston, Clerk
US District Court
Eastern District of NC
JA

UNITED STATES OF AMERICA,

v.

DWAYNE OCTAVIOUS SMITH

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INDICTMENT

The Grand Jury charges that:

COUNT ONE

At all times material to this Count, the Handee Hugos #96, located at 6927 Buffalo Road, Raleigh, North Carolina, was engaged in a commercial retail business in interstate commerce and was an industry which affects interstate commerce.

On or about May 7, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, aiding and abetting another, did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by robbery, that is, unlawfully taking and obtaining personal property from the person and in the presence of another, against that person's will, by means of actual and threatened force, as set forth in Title 18,

United States Code, Section 1951(b)(1), of Handee Hugos #96, located at 6927 Buffalo Road, Raleigh, North Carolina, all in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT TWO

On or about May 7, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is, interference with commerce by robbery, in violation of Title 18, United States Code, Section 1951, as alleged in Count One of the Indictment, did knowingly use and carry a firearm, that is a short-barreled shotgun as defined by Title 18, United States Code, Section 921(a)(6), and did possess said firearm in furtherance of said crime of violence, and said firearm was brandished, all in violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT THREE

At all times material to this Count, Handee Hugos #86, located at 2800 Tryon Road, Raleigh, North Carolina, was engaged in a commercial retail business in interstate commerce and was an industry which affects interstate commerce.

On or about May 13, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, aiding and abetting another, did unlawfully obstruct, delay, and affect, and

attempt to obstruct, delay, and affect, commerce, as that term is defined in Title 18, United States Code, Section 1951(b) (3), and the movement of articles and commodities in such commerce, by robbery, that is, unlawfully taking and obtaining personal property from the person and in the presence of another, against that person's will, by means of actual and threatened force, as set forth in Title 18, United States Code, Section 1951(b) (1), of Handee Hugos #86, located at 2800 Tryon Road, Raleigh, North Carolina, all in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT FOUR

On or about May 13, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is, interference with commerce by robbery, in violation of Title 18, United States Code, Section 1951, as alleged in Count Three of the Indictment, did knowingly use and carry a firearm, that is a short-barreled shotgun as defined by Title 18, United States Code, Section 921(a) (6), and did possess said firearm in furtherance of said crime of violence, and said firearm was brandished, all in violation of Title 18, United States Code, Section 924(c) (1) (A) .

COUNT FIVE

At all times material to this Count, Kangaroo Gas Station #916, located at 3721 Tryon Road, Raleigh, North Carolina, was engaged in a commercial retail business in interstate commerce and was an industry which affects interstate commerce.

On or about May 16, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by robbery, that is, unlawfully taking and obtaining personal property from the person and in the presence of another, against that person's will, by means of actual and threatened force, as set forth in Title 18, United States Code, Section 1951(b)(1), of Kangaroo Gas Station #916, located at 3721 Tryon Road, Raleigh, North Carolina, all in violation of Title 18, United States Code, Section 1951.

COUNT SIX

On or about May 16, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is, interference with commerce by robbery, in violation of Title 18, United States Code, Section

1951, as alleged in Count Five of the Indictment, did knowingly use and carry a firearm, that is a short-barreled shotgun as defined by Title 18, United States Code, Section 921(a)(6), and did possess said firearm in furtherance of said crime of violence, and said firearm was brandished, all in violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT SEVEN

At all times material to this Count, Kangaroo Express #320, located at 3289 Avent Ferry Road, Raleigh, North Carolina, was engaged in a commercial retail business in interstate commerce and was an industry which affects interstate commerce.

On or about May 17, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect, commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by robbery, that is, unlawfully taking and obtaining personal property from the person and in the presence of another, against that person's will, by means of actual and threatened force, as set forth in Title 18, United States Code, Section 1951(b)(1), of Kangaroo Express #320, located at 3289 Avent

Ferry Road, Raleigh, North Carolina, all in violation of Title 18, United States Code, Section 1951.

COUNT EIGHT

On or about May 17, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is, interference with commerce by robbery, in violation of Title 18, United States Code, Section 1951, as alleged in Count Seven of the Indictment, did knowingly use and carry a firearm, that is a short-barreled shotgun as defined by Title 18, United States Code, Section 921(a)(6), and did possess said firearm in furtherance of said crime of violence, and said firearm was brandished, all in violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT NINE

At all times material to this Count, the Handee Hugos #58, located at 540 North Person Street, Raleigh, North Carolina, was engaged in a commercial retail business in interstate commerce and was an industry which affects interstate commerce.

On or about May 18, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, aiding and abetting another, did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect, commerce, as that term is

defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by robbery, that is, unlawfully taking and obtaining personal property from the person and in the presence of another, against that person's will, by means of actual and threatened force, as set forth in Title 18, United States Code, Section 1951(b)(1), of Handee Hugos #58, located at 540 North Person Street, Raleigh, North Carolina, all in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT TEN

On or about May 18, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is, interference with commerce by robbery, in violation of Title 18, United States Code, Section 1951, as alleged in Count Nine of the Indictment, did knowingly use and carry a firearm, that is a short-barreled shotgun as defined by Title 18, United States Code, Section 921(a)(6), and did possess said firearm in furtherance of said crime of violence, and said firearm was brandished, all in violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT ELEVEN

At all times material to this Count, Gabe's Mart, located at 305 Jones Franklin Road, Raleigh, North Carolina, was engaged in a commercial retail business in interstate commerce and was an industry which affects interstate commerce.

On or about May 19, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein,, did unlawfully attempt to obstruct, delay, and affect, commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by robbery, that is, unlawfully taking and obtaining personal property from the person and in the presence of another, against that person's will, by means of actual and threatened force, as set forth in Title 18, United States Code, Section 1951(b)(1), of Gabe's Mart, located at 305 Jones Franklin Road, Raleigh, North Carolina, all in violation of Title 18, United States Code, Section 1951.

COUNT TWELVE

On or about May 19, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is, attempted interference with commerce by robbery, in violation of Title 18, United States Code,

Section 1951, as alleged in Count Eleven of the Indictment, did knowingly use and carry a firearm, that is a short-barreled shotgun as defined by Title 18, United States Code, Section 921(a)(6), and did possess said firearm in furtherance of said crime of violence, and said firearm was brandished, all in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

COUNT THIRTEEN

On or about May 20, 2015, in the Eastern District of North Carolina, DWAYNE OCTAVIOUS SMITH, defendant herein, having been convicted of a crime punishable by imprisonment for a term exceeding one (1) year, did knowingly possess, in and affecting commerce, a firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924.

FORFEITURE NOTICE

Upon conviction of any of the offense set forth in Counts Two, Four, Six, Eight, Ten, Twelve and Thirteen of this Indictment, the defendant shall forfeit to the United States pursuant to Title 18, United States Code, Section 924(d)(1) and Title 28, United States Code, Section 2461(c), any firearm or ammunition involved or used in a knowing commission of that offense.

If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

REDACTED VERSION

Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.

FOREMAN

DATE

5/10/16

JOHN STUART BRUCE
Acting United States Attorney

BY:

Jason M. Kellhofer
JASON M. KELLHOFER

Assistant United States Attorney